

COURT OF APPEALS
DIVISION TWO

ECKERSTROM, Presiding Judge.

¶1 A jury found David Yulo Martinez, III, guilty of possession of a deadly weapon by a prohibited possessor. The court sentenced Martinez to a mitigated prison term of three years. On appeal, Martinez challenges his conviction on the ground that the trial court erred in denying his motion to suppress the gun seized from the truck he had been driving. For the reasons stated below, we affirm.

¶2 We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion and rely only on what was presented at the suppression hearing. *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004). We view that evidence and all reasonable inferences therefrom in the light most favorable to sustaining the trial court's ruling, but we review the court's legal conclusions de novo. *State v. Nelson*, 208 Ariz. 5, ¶ 4, 90 P.3d 206, 207 (App. 2004). At around midnight on May 15, 2005, Tucson Police Officer Jeff Rumsley was traveling eastbound on Grant Road when he was passed by a black truck. Rumsley visually estimated the truck's speed at seventy miles per hour. Rumsley increased his speed to pace the car for three-quarters of a mile and verified the truck driving at over sixty-five miles per hour, a speed in excess of the posted speed limit.

¶3 Because Rumsley was driving an unmarked vehicle, he radioed for another officer in a marked vehicle to stop the truck. Tucson Police Sergeant Paul Tosca responded, saw a truck matching the description provided by Rumsley, activated his emergency lights, and stopped the truck. Officers later identified the vehicle stopped as a 2002 Lincoln Continental Navigator. Rumsley arrived shortly thereafter.

¶4 Tosca approached the driver's side of the truck and asked the driver, Martinez, for his driver's license, registration, and insurance, which Martinez produced. Another

officer, Mike Pelton, approached the passenger side of the vehicle. As Pelton did so, Tosca asked Martinez if he had any weapons in the car. Martinez hesitated and Tosca asked again, shining his flashlight into the interior of the truck. Martinez reached under the seat and slid out a pistol. Tosca and Pelton both drew their weapons and Tosca instructed Martinez to put up his hands, but Martinez did not do so.

¶5 The officers then removed Martinez from the truck, handcuffed him, and detained him in the back of a patrol car. As soon as Martinez was out of the truck, Pelton jumped into the driver's seat to put the vehicle in the park position and keep it from rolling. At this time, Pelton observed a black pistol on the driver's side floorboard "within view."

¶6 A Pima County Grand Jury indicted Martinez for possession of a deadly weapon by a prohibited possessor, a class four felony.¹ He moved to suppress all evidence observed and seized as a result of the stop, arguing that there was no reasonable suspicion to stop the vehicle or suspect he had illegal drugs or weapons on his person. After a suppression hearing, the court denied the motion to suppress the evidence seized at the scene, finding Officers Tosca and Pelton had probable cause to stop Martinez because he had been speeding, and the warrantless seizure of the weapon was reasonable because the gun was seized "at or near the time and location of the arrest" and "was actually observed by Ofc. Pelton prior to any entry into the vehicle."

¶7 Martinez first maintains the officers did not have "reasonable suspicion" to stop the truck because they did not have a "particularized and objective basis" for

¹Martinez had previously been convicted of a drug-related charge in Pima County.

suspecting him of criminal activity, as required by the United States and Arizona Constitutions. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996), quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981). Stopping a vehicle to issue a traffic citation is a seizure within the meaning of the Fourth Amendment and therefore must comport with the constitutional requirement of reasonableness. *State v. Boudette*, 164 Ariz. 180, 184, 791 P.2d 1063, 1067 (App. 1990). The requirement is met when the totality of the circumstances provides a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778, quoting *Cortez*, 449 U.S. at 417-18.

¶8 An officer may stop and detain a person when reasonably necessary to investigate an actual or suspected violation of the transportation code. *See* A.R.S. § 28-1594. Rumsley observed Martinez violating the transportation code by speeding. Martinez suggests that Tosca lacked reasonable cause to stop him because Rumsley, not Tosca, had observed the speeding violation. But we have previously held that § 28-1594 permits an officer to stop a vehicle for a violation “not committed in that officer’s presence but observed and reported by another officer.” *State v. Box*, 205 Ariz. 492, ¶ 12, 73 P.3d 623, 627 (App. 2003); *see also State v. Lawson*, 144 Ariz. 547, 553, 698 P.2d 1266, 1272 (1985) (probable cause may be established by collective knowledge of law enforcement). Because Rumsley’s eyewitness observation of Martinez’s speeding provided Tosca with a particularized and objective basis for suspecting Martinez had violated the transportation code, Tosca had reasonable grounds to stop Martinez.

¶9 Martinez also suggests that Tosca’s stop was improper because the officer did not have adequate information from Rumsley to distinguish Martinez’s truck from other similar vehicles. But Tosca executed the stop on a vehicle that matched the color and type of vehicle described by Rumsley, traveling in the location and direction Rumsley had indicated. Moreover, Rumsley pulled behind the truck after it had been stopped and participated in the investigation and detention of Martinez. Thus, the court had evidence to reasonably reject Martinez’s suggestion that the officers mistook his car for another or that Tosca had lacked sufficiently particular information to justify the stop of the truck. The trial court did not err in finding that the officers had reasonable grounds to stop Martinez.

¶10 Martinez also contends the search of the Navigator was unconstitutional. Relying on *Illinois v. Gates*, 462 U.S. 213 (1983), Martinez argues the automobile exception to the warrant requirement does not apply because the police lacked probable cause to believe that the Navigator contained contraband, here an unlawfully possessed firearm. Although the “automobile exception” is one exception to the warrant requirement for the search or seizure of evidence, it is hardly the only one.

¶11 When an officer views contraband in “plain view” the object may be seized. *State v. Warness*, 26 Ariz. App. 359, 360, 548 P.2d 853, 854 (1976). To qualify for the “plain view” exception, “the officer must have prior justification to be in a position to view the evidence; the discovery of the object must be inadvertent; and its evidentiary value must be immediately apparent to the officer.” *State v. Kelly*, 130 Ariz. 375, 378, 636 P.2d 153, 156 (App. 1981).

¶12 As the trial court noted, Pelton’s testimony suggested he had seen Martinez’s pistol in plain view through the passenger side window as Martinez was attempting to reach it. Later, Pelton saw the pistol again as he jumped into the driver’s seat to place the truck into park when it began to roll. Because Pelton was authorized to enter the vehicle for public safety reasons, he had a proper justification to be in a position to view the pistol a second time. *See State v. Jones*, 188 Ariz. 388, 395, 937 P.2d 310, 317 (1997) (emergency aid exception to warrant requirement applies when protecting “life and property”).² Because Pelton was entitled to seize evidence he saw in plain view from positions he was lawfully entitled to occupy, his seizure of the pistol complied with the requirements of the Fourth Amendment. The trial court did not err in so ruling.

¶13 We affirm the conviction and the sentence imposed.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge

²Martinez does not contend that the pistol lacked immediately apparent evidentiary value.